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November 9, 2007

VIA FACSIMILE

Honorable James C. Francis IV
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Albertson et al., v. The City of New York et al.,
05-CV-7692 (RJS)(JCF)

Dear Judge Francis:

This firm represents all Plaintiffs in the above-referenced RNC case. I write regarding the deposition of Police Officer James Connolly ("P.O. Connolly").

I write because we have had significant difficulty scheduling the deposition of P.O. Connolly, an arresting officer for one of this firm's clients.¹

P.O. Connolly's deposition was originally so ordered for October 17, 2007. On September 25, 2007, Assistant Corporation Counsel Fred Weiler, Esq. ("Mr. Weiler") requested that P.O. Connolly's deposition be adjourned to October 18, 2007 and I consented. Then, on October 15, 2007, Mr. Weiler informed me that P.O. Connolly had suffered a concussion, and I again agreed to adjourn the deposition. The new date was to be November 7, 2007. However, on November 1, 2007, Mr. Weiler informed me that P.O. Connolly was on indefinite sick leave (due to the concussion) and would not be able to be deposed on November 7, 2007.

¹ P.O. Connolly arrested Nicholas Albertson on August 31, 2004.

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At my request, Mr. Weiler provided documentation of P.O. Connolly's head injury. However, that documentation failed to state the length of the sick leave and whether the sick leave was indefinite. Moreover, the documentation stated that P.O. Connolly had suffered a head injury but only possibly a concussion.

On November 5, 2007, in response to an inquiry from me, Mr. Weiler stated that he was unsure when P.O. Connolly could be deposed. I reminded Mr. Weiler of the impending close of discovery, but he stated that P.O. Connolly would not be able to be deposed prior to November 30, 2007. I suggested November 30, 2007, but did not immediately hear back from Mr. Weiler. On November 7, 2007, at another deposition, I asked Mr. Weiler to confirm the November 30, 2007 deposition, but he could not. Instead, he claimed that he was unsure whether P.O. Connolly would be better by November 30, 2007.

Plaintiffs are sympathetic to P.O. Connolly's physical condition and also do not want him to be deposed when physical or mental issues may inhibit his testimony. However, by November 30, 2007, P.O. Connolly will have had approximately forty-five (45) days to recover from a head injury and *possible* concussion. At this point, it appears that it is counsel's unwillingness to produce a witness, not an injury, which is preventing P.O. Connolly from being deposed. It is significant to note that a number of witnesses noticed by RNC Plaintiffs have yet to be deposed and that our Plaintiffs had to seek judicial intervention to have Detective Victor Lebron deposed.

Therefore, Plaintiffs respectfully request that the Court so order that:

EITHER:

(1) Police Officer James Connolly, if able to testify, shall be produced for a deposition at Alterman & Boop, LLP, 35 Worth Street, New York, New York 10013 on November 30, 2007, starting at 10:00 a.m.

OR

(2) If Police Officer James Connolly is unable to testify on November 30, 2007, Defendants shall produce medical records every fifteen (15) days, updating Plaintiffs and the Court as to the status of Police Officer James Connolly's head injury and the earliest possible date on which it is anticipated that he can be deposed AND Defendants may not make any dispositive motions until Police Officer James Connolly is deposed.

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This is Plaintiffs' first application relative to the deposition of Police Officer James Connolly.

Respectfully submitted,

ALTERMAN & BOOP LLP

By: Matthew S. Porges

MATTHEW S. PORGES (MP-5826)

cc: Fred Weiler, Esq. (via email)
Gerald Smith, Esq. (via email)
RNC Distribution List (via email)

11/27/07

Application denied. Officer Connolly shall be deposed on December 14, 2007 unless counsel agree otherwise or unless he is physically incapacitated. If the latter, counsel shall agree on a presumptive adjourned date.

SO ORDERED.
James C. Francis IV
USMJ